

Planning Statement Ref: s106-2512-v-1

Requesting the Discharge of a Section 106 Agreement

specifically, Planning Obligations (a), (b), (c) and (d)

*entered into on the 20th day of May 1999
between North Wiltshire District Council
and T L S Livingstone Learmonth*

**in relation to the dwelling known today as
Dairy Cottage, Pinkney, Malmesbury SN16 0NZ**

and its associated Planning Permission Ref: 98/02279/FUL

Prepared by

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on behalf of the Applicant
Mrs P Livingstone-Learmonth

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Introduction

- Parsonson Planning Consultancy has been instructed to prepare and present an application under Section 106 of the Town and Country Planning Act, 1990, seeking to discharge planning obligations.
- The planning obligations seek to control ownership and occupancy of two dwellings, Dairy Cottage and Park Farm.
- We specialise in matters relating to occupancy conditions and planning obligations providing advice to, and receiving instructions from, Solicitors, Surveyors, Estate Agents, Councils as well as owners of properties subject to such restrictions.
- Parsonson Planning Consultancy has considered matters relating to occupancy conditions and planning obligations throughout England and Wales for in excess of 30 years.
- The application, through this Planning Statement and its associated documents, provides an assessment of the Section 106 Agreement and the planning obligations contained therein.
- This has been undertaken to assess if there is sufficient justification for the continued retention of the planning obligations, as per the requisite tests, and to identify whether they are able to serve a useful purpose.

Planning Statement

Ref: s106-2512-v-1

1.00 The Request

- 1.01 Under Section 106A of the Town and Country Planning Act 1990, as amended, the applicant:

Mrs P Livingstone-Learmonth

requests the Discharge of a Legal Agreement entered into pursuant to a 1999 planning permission.

- 1.02 Planning Permission, ***Ref: 98/02279/FUL***, was granted by North Wiltshire District Council on the 01.07.1999. This permission allowed:

Change of Use from Stables to Residential Accommodation

- 1.03 The stables, or more particularly a former milking parlour situated within a courtyard of stables, was subsequently converted and since completion the resulting dwellinghouse has been known as:

Dairy Cottage

Park Farm

Pinkney

Sherston

Malmesbury SN16 0NZ

- 1.04 The Planning Permission was granted subject to a number of planning conditions relating, primarily, to amenity. In addition to the conditions, there was an *Informative* drawing attention to the contents of a ***Section 106 Agreement***.

- 1.05 On the ***Twentieth day of May 1999***, the Section 106 Agreement was made between:

North Wiltshire District Council of the first part

and

Thomas Lestock Somerville Livingstone Learmonth of the other part.

- 1.06 The Agreement was made in pursuance of Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982. The covenants contained within the Agreement were deemed to be planning obligations for the purposes of Section 106.

1.07 This application formally requests:

The discharge of the Section 106 Agreement entered into on the 20th day of May 1999, specifically, planning obligations (a), (b), (c) and (d)

through the issuance of a planning decision, on the grounds that they:

- *cannot serve a useful purpose;*
- *are no longer required to serve the intended purpose; and, in part,*
- *step beyond matters of land use with which the planning regime is concerned;*

2.00 The Provisions of Section 106

2.01 Section 106 Agreements are used to prescribe the nature of a development by, for example, requiring that a given proportion of housing is 'affordable'; or to secure a contribution from a developer to compensate for loss or damage created by a development; or to mitigate a development's impact through increased public transport provision. The outcome of the use of such planning obligations should be that the development concerned is made to accord with published local, regional or national planning policies.

2.02 Currently, the use of planning obligations is generally advocated for large scale developments which have an impact upon, for example, infrastructure where it is adduced that there is a need to confer some wider benefit on the community. They should only be used where it is not possible to address any unacceptable impacts of the development through the use of planning conditions.

2.03 In this case it is advanced that the Section 106 Agreement entered into on the 20th May 1999 is an unnecessary over-control which no longer accords with published national planning policies or emerging local planning policies. Accordingly, the applicant seeks release from it.

2.04 The Town and Country Planning Act 1990, as amended, allows for the modification and discharge of planning obligations through applications to be made to the local planning authority and we make this application seeking the discharge of all of the planning obligations contained within the Section 106 Agreement.

2.05 Anyone against whom a planning obligation is enforceable may, at any time after the 'relevant period' expires, apply to the Local Planning Authority concerned for the obligation to be discharged. We make this application on behalf of Mrs P Livingstone-Learmonth, the successor in title of the original party to the Agreement and owner of the properties subject to it known as Park Farm and Dairy Cottage, SN16 0NZ.

- 2.06 Section 106A(4) defines 'relevant period' as such period as may be prescribed by the Secretary of State in regulations, failing which the period is to be five years from the date the obligation is entered into. The obligation was entered into over twenty five years ago whereby the 'relevant period' has expired.
- 2.07 106A(6) provides that an authority which receives an application for modification or discharge of a planning obligation may determine it by refusing it; or, if the obligations no longer serve any useful purpose, by discharging it; or if the obligation would serve a useful purpose equally well with the modifications specified by the application, by consenting to the modifications sought.
- 2.08 In this case, we seek the Council's consent to fully *discharge* the entire Section 106 Agreement as it is advanced that none of the planning obligations contained therein remain necessary, reasonable or useful.

3.00 The Planning Obligations

- 3.01 In 1999, the Local Planning Authority expressed its willingness to grant planning permission for the *Change of Use from Stables to Residential Accommodation* (Dairy Cottage) containing all things required for day to day living.
- 3.02 The Section 106 Agreement was entered into in an effort to avoid an independent separate dwelling resulting.
- 3.03 It is considered that in the granting of this consent, and the subsequent use and occupation of the residential accommodation permitted, it was inevitable and unavoidable that an independent separate dwelling would result. This is primarily by virtue of the accommodation it provided, but also because of its clear separation and distance from Park Farm dwellinghouse, as part of which it was intended to be incidentally enjoyed.
- 3.04 The applicant provides a Statutory Declaration which sets out the unavoidable *independent and separate use of the dwelling* created (Dairy Cottage), which will be discussed later in this Statement.
- 3.05 As well as seeking to control the nature of use, the Section 106 Agreement also sought to control ownership, as per ***Planning Obligations (a) and (b)*** which require the following:

- (a) *The Owner will not sell or lease for any term or otherwise dispose of the Main Dwelling (Park Farm) unless such sale or lease or other disposition shall include the Additional Accommodation (Dairy Cottage);*
 - (b) *The Owner will not sell or lease for any term or otherwise dispose of the Additional Accommodation (Dairy Cottage) unless such sale or lease or other disposition shall include the Main Dwelling (Park Farm);*
- 3.06 The use and occupancy of the new dwelling (Dairy Cottage) was intended to be controlled by **Planning Obligation (c)** by requiring that:
 - (c) *The Owner shall not cause or permit the Additional Accommodation (Dairy Cottage) to be used or occupied other than by members of the Owner's family or friends or by the Owner's employees employed solely or mainly at Park Farm aforesaid and in a matter incidental to the enjoyment of the main dwelling as a single dwellinghouse.*
- 3.07 A final clause, **Planning Obligation (d)**, which intended to clear and tidy elements of the site, required that:
 - (d) *The Owner shall within six months of the granting of the said planning permission remove from the Land the residential caravan currently situate thereon and will dismantle and remove from the Land the concrete block wall currently situate in front of the proposed Additional Accommodation (Dairy Cottage) and identified shaded green on the Plan*

4.00 Testing the Planning Obligations

- 4.01 The first two planning obligations, **(a)** and **(b)**, mirror one another in their requirement to restrict Park Farm dwellinghouse and Dairy Cottage dwellinghouse from being separated through sale, lease or other disposal.
- 4.02 The third planning obligation, **(c)**, seeks to control occupancy of the dwellinghouse by limiting it to friends, family or employees at Park Farm in a manner incidental to the enjoyment of the main dwelling as a single dwellinghouse.
- 4.01 The fourth planning obligation **(d)** has been effectively discharged, by dint of actions and the passage of time.

4.04 Planning Obligations (a) and (b)

These two obligations have the effect of controlling land and property *ownership*. This is not a function of the planning regime, which is designed and intended to control land *use*. This immediately gives rise to a suggestion of conflict with Regulation 122 of the CIL

Regulations 2010, particularly following the withdrawal of any national planning policy support for this form of control some two decades ago.

- 4.05 Whilst clauses **(a)** and **(b)** may have been acceptable at the time of their drafting in 1999, Government policy no longer advocates tying land and property to prevent separate disposal of any part thereof.
- 4.06 Local Policy at the time may have reflected National Policy and is likely to have been influenced by the prevailing Planning Policy Guidance Notes, specifically PPG7, which will have further informed the drafting of the Section 106 Agreement.
- 4.07 PPG7 Annex I, which was primarily concerned with agricultural and forestry dwellings, now more usually referred to as rural worker's dwellings, confirmed at paragraph 19 that:
- In appropriate circumstances authorities may use planning obligations to tie a farmhouse to adjacent farm buildings or to the agricultural land of the unit, to prevent them being sold separately without further application to the authority.*
- 4.08 However, when PPG7 was replaced by PPS7 in 2004, this advice was specifically and significantly withdrawn. PPS7 only advocated the imposition of appropriate occupancy conditions, not the use of planning obligations to tie dwellings and land together. This augured a distinguishable sea-change, moving away from seeking to control land ownership.
- 4.09 The National Planning Policy Framework (the NPPF) has since replaced the former Planning Policy Guidance and Statements.
- 4.10 The NPPF contains the current guidance relating to the imposition of planning conditions and planning obligations, through paragraphs 56 to 58.
- 4.11 The relevant paragraphs inform us of the following:

Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Planning conditions should be kept to a minimum and only imposed where they are:

- 1) *necessary;*
- 2) *relevant to planning;*
- 3) *relevant to the development to be permitted;*
- 4) *enforceable;*
- 5) *precise; and*
- 6) *reasonable in all other respects;*

Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.*

4.12 As can be seen through the above paragraphs, unlike PPG7 but in accordance with its immediate PPS predecessor, the NPPF makes no reference to and offers no support for the tying together of land and property. National Planning Guidance does not seek to control land ownership. It seeks to control land use.

4.13 In the most basic sense, in seeking to control land *ownership*, as opposed to land *use* with which the planning regime is concerned, as per the tests for planning obligations set out above:

Planning Obligations (a) and (b)

- *are not necessary to make the development acceptable in planning terms;*
- *are not directly related to the development;*
- *are not fairly and reasonably related in scale and kind to the development; and therefore*
- *cannot be seen to be serving a useful purpose in relation to any aspect of the development.*

4.14 *Planning Obligation (c)*

In relation to ***Planning Obligation (c)***, the NPPF is clear in its drafting that *planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*. This is noteworthy because most occupancy restrictions, where they are necessary to make otherwise unacceptable development acceptable in planning terms, are imposed via a planning condition, not by a planning obligation.

4.15 The relevant planning permission was not subject to any planning conditions controlling occupancy of the dwelling permitted. Instead, ***Planning Obligation (c)*** was drafted which immediately suggests an inappropriate over-control.

4.16 ***Planning Obligation (c)*** specified who could occupy Dairy Cottage (family/friends/employees at Park Farm) and that any such occupation should be in a manner incidental to the enjoyment of Park Farm as one single dwellinghouse.

- 4.17 Drawing from the applicant's sworn Statutory Declaration, it is clear that for a reasonable period of time, Dairy Cottage was occupied by persons employed by her at Park Farm. It is also clear that this came to an end following a serious riding accident, resulting in the applicant no longer keeping horses.
- 4.18 However, it is also made clear that whilst part of **Planning Obligation (c)** was adhered to, it is the case that no one who has occupied the cottage has lived there *in a manner incidental to the enjoyment of Park Farm as one single dwellinghouse*. It is advanced that this is because *incidental occupation* was neither feasible or achievable from the outset.
- 4.19 As set out within the Applicant's sworn evidence, Dairy Cottage was permitted with, and continues to contain, all things required for independent day to day living, with no requirement for reliance upon Park Farm for meeting ones basic needs.
- 4.20 It is also clear through the evidence that Dairy Cottage has been occupied separately and independently from Park Farm from the outset.
- 4.21 Aside from the natural desire, by all parties, to live separately; the noteworthy planning point in this case is the clear physical separation between Dairy Cottage and Park Farm. Whilst the two dwellings neighbour one another, they are two physically separate and unconnected properties, sitting within entirely separate plots in what would appear to be separate planning units.



- 4.22 *A manner incidental to the enjoyment of the main dwelling as a single dwellinghouse*
The Courts have endorsed the approach that to be properly regarded as a use *incidental to the enjoyment of a dwellinghouse*, it must be a use which occurs *with* the use of the dwellinghouse, but remains at all times subordinate to it.
- 4.23 Such *incidental uses* would be expected to serve the main dwellinghouse in some way and be an incidental use within the curtilage of the dwellinghouse such use as a Gym, for Storage, a Greenhouse, Stables, an Art Studio or a Swimming Pool.
- 4.24 Accordingly, *incidental uses* are subordinate to the primary dwellinghouse use and include uses connected with the running of the dwellinghouse; or with the domestic or leisure activities of the persons living in it; rather than its use as ordinary living accommodation.
- 4.25 Notably, additions to the normal basic living accommodation of a dwellinghouse, such as bedrooms, would not be expected to be regarded as being *incidental to the enjoyment of the dwellinghouse* as such.
- 4.26 In this instance, whilst Dairy Cottage was occupied by persons who were employed in connection with activities undertaken by persons living in Park Farm dwellinghouse until 2015, the employees occupied and used Dairy Cottage as their own ordinary living accommodation, separately and independently of Park Farm dwellinghouse. The two dwellinghouses were not incidentally enjoyed as one dwelling.
- 4.27 *Ancillary/incidental use associated with the main dwelling*
The terms *ancillary* and *incidental* are frequently used interchangeably and there is little to no judicial authority which makes a distinction between the meaning to be attributed to each of these two words and, insofar as we are aware, *ancillary* is not a word used within planning legislation.
- 4.28 However, decision-making suggests that the word *ancillary* is distinguishable from the term *incidental*, as defined above, insofar as it can encompass additional primary uses, such as providing *ancillary* accommodation to a single dwellinghouse.
- 4.29 For example, a converted garage or a caravan situated within the curtilage of a dwellinghouse can provide additional, supplementary bedrooms and be considered as part and parcel of the primary use by providing *ancillary* accommodation. This is, however, contingent upon those using the converted garage or caravan remaining reliant upon the main dwellinghouse for some of their day to day needs such as, for the preparation and eating of meals, washing facilities, laundry facilities and so on. It also requires the additional accommodation to be within the curtilage of the host dwelling.

4.30 *Occupied as a separate residential unit*

Being occupied as a separate residential unit is akin to being occupied as a single dwellinghouse. Whilst there is no statutory definition of the ordinary word *dwellinghouse*, planning guidance, Appeals and Case Law authorities provide us with the following interpretation:

Dwellinghouse:- *Where a self-contained set of premises comprises a unit of occupation, which can be regarded as separate from any other part of a building containing them, are designed or adapted for residential purposes containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse and they are used as a dwelling by a single person or by more than one person living together as or like a single family, those premises can be properly be regarded as being in use as a single dwellinghouse for the purposes of the Act.*

- 4.31 By virtue of the issuance of a planning permission for *residential accommodation* in 1999 allowing a *development* which provided all things required for day to day living, a dwellinghouse was permitted. In accordance with the accepted definitions, this could not and did not provide for a use *in a manner incidental to the enjoyment of the Park Farm dwellinghouse*.
- 4.32 Furthermore given its location, some distance from Park Farm dwelling within a neighbouring site, it is contended that it would not be able to reasonably provide or function as *ancillary accommodation* either.
- 4.33 Park Farm is a large, detached single dwellinghouse, sitting within its own separate and distinct plot, accessed via the highway.
- 4.34 Dairy Cottage is a small single dwellinghouse, attached to the remainder of a building which is essentially unused and redundant. It sits in the centre of a courtyard of buildings, predominantly inward facing former stables, forming a distinctly separate unit, with a separate access off of the highway.
- 4.35 By virtue of the issuance of a planning permission for *residential development* in 1999 allowing a development which provided all things required for day to day living, coupled with the location of the dwellinghouse created in relation to the intended host dwelling, *Dairy Cottage* was unable to be used in a *manner incidental to the enjoyment of Park Farm as a single dwellinghouse* or provide *ancillary accommodation to Park Farm* from which it is entirely separate, with the two dwellings sitting within their own separate planning units.

Park Farm Dwelling



Access to Park Farm Dwelling



Dairy Cottage Dwelling



Access to Dairy Cottage Dwelling



4.36 The planning permission allowed for the development of a dwellinghouse, not subject to any occupancy conditions. Whilst the planning obligations sought to avoid the creation of an independent separate dwelling, for the above reasons, this was the unavoidable outcome.

4.37 It is therefore advanced that:

Planning Obligation (c)

- *is not directly related to the development;*
- *is not fairly and reasonably related in scale and kind to the development;*
- *could not realistically stop the creation of an independent separate dwelling; and therefore*
- *cannot serve a useful purpose;*

4.38 This unavoidable outcome in relation to ***Planning Obligation (c)*** further impacts upon the credence and relevance of ***Planning Obligations (a) and (b)*** which sought to tie

together what are essentially two distinctly separate dwellings, sitting within two separate planning units.

4.39 It is therefore further advanced that even if they could be in any way justified today:

Planning Obligations (a) and (b)

- *cannot serve a useful purpose;*

4.40 ***Planning Obligation (d)***, which intended to clear and tidy elements of the site, ensured that both the residential caravan and the wall in front of the Dairy Cottage were removed.

4.41 It is therefore advanced that the requirements of this obligation have been served whereby:

Planning Obligation (d)

- *no longer serves a useful purpose;*

5.00 Policy Context and Decision Making Today

5.01 Having established that:

- ***Planning Obligations (a) and (b)*** are an over-control no longer supported by central Government or local policy, which also cannot serve a useful purpose;
- ***Planning Obligation (c)*** cannot serve a useful purpose and Dairy Cottage has been unavoidably used and occupied as a separate single dwellinghouse since completion; and that
- ***Planning Obligation (d)*** is already technically, discharged;

we will go on to consider whether the Planning Obligations serve any other potentially useful purpose in relation to Planning Policy and Decision Making today, to assess whether their continued retention can be in any way justified.

5.02 This will be considered in the context that, when they are used, planning obligations must meet *all* of the following tests. They must be:

- necessary to make the development acceptable in planning terms (bearing in mind that they should only be used where it is not possible to address unacceptable impacts through planning conditions);*
- directly related to the development; and*
- fairly and reasonably related in scale and kind to the development;*

5.03 The *development* in this case was described as *Change of Use from Stables to Residential Accommodation*, essentially, the conversion of a redundant rural building to form a single dwellinghouse.

5.04 Through this part of the Section 106 Application, we ask:

- if the application for *development* were before the LPA today, *would it require the imposition of planning conditions or planning obligations to make it acceptable in planning terms?*

This will assist in a further assessment as to whether the Planning Obligations remain *necessary*, to make the development acceptable in planning terms, sufficiently *related to the development* and able to *serve a useful purpose*.

5.05 Considering current Central Government Advice, specifically the *National Planning Policy Framework (the NPPF) December 2024 Revision, Paragraph 84* clearly informs that:

Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- c) *the development would re-use redundant or disused buildings and enhance its immediate setting*

5.06 Whilst Dairy Cottage is not entirely isolated, forming one of a cluster of four dwellings situated in its own plot surrounded by a number of outbuildings, it is located in the countryside.

5.07 Through National and Local Development Plan Policy (the *Wiltshire Core Strategy 2015*) development in the countryside is restricted.

5.08 However, in this instance *paragraph 84 c) of the NPPF* is directly applicable to this form of *development* and provides overarching support for it. As such, local plan policies and decision making is expected to reflect this.

5.09 *Core Policy 48: Supporting Rural Life* is the current local policy relating to development in the countryside with a key objective being to protect it and restrict growth.

5.10 *Core Policy 48* refers to *Conversion and Re-Use of Rural Buildings* primarily for *employment, tourism and cultural and community uses*. In some limited cases, *re-use for residential purposes may be permitted where justified by special circumstances*.

5.11 In considering local decision making, a relatively recent Application, *Ref: PL2023/09361*, sought to discharge a similar Planning Obligation. However, this was refused in 2024 because it triggered *Core Policy 48*.

- 5.12 In that case, the LPA determined that retention of the Section 106 Agreement would prevent the planning harm that its discharge would create. This suggests that the LPA concluded that the planning obligation remained necessary to make otherwise unacceptable development acceptable in planning terms and therein, it continued to serve a useful purpose.
- 5.13 However, this refusal was overturned at Appeal where the Inspector concluded that this was an acceptable form of development in the countryside and, accordingly, the planning obligation no longer served a useful purpose. This was primarily because it was adduced that *Core Policy 48* goes beyond the requirements of *paragraph 84 c) of the NPPF* and, as such, only moderate weight could be attributed to it.
- 5.14 Considering the emerging *Local Plan, 2020-2038*, this appears to be more commensurate with *the NPPF* in its approach to the re-use of buildings in the countryside.
- 5.15 *Policy 82* explains the approach that will be taken for *housing in the countryside*. Dwellings in the countryside can be justified in certain situations, one such situation being:
- *to optimise re-use of redundant or disused buildings in the countryside;*
- which closely reflects and accords with the approach shown through the NPPF
- 5.16 *Policy 82 3.*
The proposal is for the conversion or re-use of a disused building in the countryside. In such circumstances, evidence will be required to show that the building is structurally sound and capable of conversion without major rebuilding, and that the development would enhance the character of the original building and its setting.
- 5.17 The section of the building forming the *development*:
- *is (and was) structurally sound;*
 - *is (and was) capable of conversion without rebuilding; and*
 - *continues to enhance the character of the original building and its setting;*
- 5.18 Accordingly, it is contended that if the application were before the LPA today, it could be permitted without the need to impose occupancy controlling planning conditions or enter into a Section 106 Legal Agreement as it would be policy compliant in terms of *paragraph 84 of the NPPF* and the *emerging Local Plan Policy 82*, noting that a recent Appeal Decision attributes only moderate weight to any perceived conflict with *CP48*.

5.19 This confirms that:

Planning Obligations (a), (b) and (c)

- *are not necessary to make the development acceptable in planning terms; and*
- *cannot be seen to be serving a useful purpose;*

5.20 ***Planning Obligation (d)*** has effectively been discharged and:

- *no longer serves a useful purpose;*

6.00 Unjustifiable Burdens

6.01 The general principles relating to the imposition and retention of both planning conditions and planning obligations is that:

- *they should not place unjustifiable burdens upon applicants;*
- *they should only be used to mitigate the impacts of a development, to make what would otherwise be unacceptable development acceptable in planning terms; and*
- *Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition;*

6.02 Having been unable to obtain a copy of the 1999 Case Officer's Report, we do not know what, if any, justification was given for the imposition of any of the planning obligations. We do not know why it was considered reasonable to tie neighbouring properties together and nor do we know why it was considered necessary to control occupancy of Dairy Cottage. Further, we do not know why, in seeking to control occupancy, this was attempted with the use of a planning obligation rather than with a planning condition or through the description of development.

6.03 Suffice to say, we have a cumbersome instrument in place, no part of which would be considered reasonable or necessary today to make the development acceptable in planning terms.

6.04 The Section 106 Agreement is an onerous instrument, placing significant limitations upon any party bound by it. For example, in the event that a property owner wished to sell the courtyard of stables and outbuildings, Dairy Cottage would have to be excluded from the sale and retained with the neighbouring property, Park Farm.

6.05 This impacts not only upon the property owner's freedom to do with her property as she sees fit, but it could also have a negative impact upon any future optimum use of the buildings, which appears to be an over control.

- 6.06 In the circumstances of this case, retention of the planning obligations would appear to be overly restrictive and onerous, placing unnecessary limitations upon the owner of the property and upon the property itself. This suggests an unjustifiable interference with unreasonable and negative impacts, and this is advanced as a material consideration in decision making.

7.00 Impacts of the Proposal

- 7.01 Whilst it is of course acknowledged that it currently remains subject to the Section 106 Agreement and the planning obligations contained therein, the lawfully permitted use of Dairy Cottage (as per the planning permission) is the same as the current lawful planning use in that it is, and it has always been (unavoidably) used as a separate single dwellinghouse since completion, with no apparent negative impacts arising.
- 7.02 In terms of Planning Policy, falling outside of any settlement boundary and located within the countryside, a dwelling in this location could present a degree of conflict with Local Plan Policies designed to protect such a location.
- 7.03 However, in terms of a re-use of a redundant building, it is already established that this would be an acceptable form of development, aligned with the policy approach advocated in *paragraph 84*. As an acceptable form of development, this infers that there is a lack of harm to be mitigated and therein, no need or justification for the imposition of planning conditions or planning obligations to make it acceptable in planning terms.
- 7.04 The dwelling house is already developed through conversion and has been occupied as a C3 single dwellinghouse for over 25 years. No visual or other changes, such as an increase in trips to and from the site by private vehicles, would occur in the event that planning permission were granted to allow the discharge of the planning obligations. There would be no physical changes to the site and therefore no effect on its character or appearance.
- 7.05 Dairy Cottage would continue to sit harmoniously in the landscape. It would continue to effectively function as a separate dwelling and, albeit modestly, it would contribute to the housing land supply. Its effect upon its surroundings is already present and will remain so, irrespective of whether the planning obligations are discharged. Accordingly, no harm would arise and this is also advanced as a material consideration in decision making.

8.00 Assessment Conclusions

8.01 As with any application seeking the discharge of a Section 106 Agreement, one is required to determine whether the planning obligations continue to:

- *serve a useful purpose.*

8.02 This application has endeavoured to assess this by considering:

- *the requirements of each planning obligation in relation to the development permitted;*
- *the location of the development permitted;*
- *the nature of use of the development permitted; and*
- *current national and local planning policy relating to the development permitted;*

8.03 In the overall assessment, we have considered whether the planning obligations continue to meet *the tests* prescribed by the NPPF, PPG and the Cil Regulations, which clearly inform us that *Planning obligations must meet all of the following tests:*

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development;*
- c) fairly and reasonably related in scale and kind to the development;*

8.04 Through Section 4.00 above, this application has sought to test the planning obligations. This has demonstrated that both individually and collectively, the planning obligations fail to meet the requisite tests and this is considered to be fatal to them, resulting in them being *unable to serve a useful purpose.*

8.05 From a planning policy perspective, Section 38(6) of the Planning and Compulsory Purchase Act 2004 clearly instructs us that:

'if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'.

8.06 In this instance, the *development* broadly accords with *the NPPF* and with the *emerging local plan*. As a consequence of its inconsistency with the NPPF, only moderate weight can be attributed to *Core Policy 48 of the Wiltshire Core Strategy*.

8.07 Accordingly, a decision to approve this application can be made, reasonably in accordance with development plan policies, thus precluding the need to impose planning conditions or planning obligations to make it acceptable in planning terms. It is an acceptable form of development.

8.08 As a consequence of both the specific failings identified with regard to the planning obligations along with the broad policy compliance with regard to the development:

when applying *the tests*, the planning obligations are found to be:

- *unnecessary;*
- *not related to the development;*
- *not fairly and reasonably related in scale and kind to the development;*

and this in turn demonstrates that that the planning obligations:

- *cannot serve a useful purpose;*
- *are no longer required to serve the intended purpose;*
- *step beyond matters of land use;*

8.09 In light of this, continued retention of the planning obligations is considered to:

- *place unjustifiable burdens upon the applicant; in circumstances where*
- *no harm will arise from their discharge;*

8.10 Accordingly, the applicant requests:

The discharge of the Section 106 Agreement entered into on the 20th day of May 1999, specifically, planning obligations (a), (b), (c) and (d)

as the assessment informs us that there is insufficient justification for their continued retention.

PLANNING STATEMENT COMPLETED BY

Caroline G Parsonson (Miss)

Parsonson Planning Consultancy - Occupancy Condition Specialists

September 2025